

19 February 2014

Mr. M. Legote
The National Treasury
240 Vermeulen Street
PRETORIA
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BY E-MAIL: MPHO.LEGOTE@TREASURY.GOV.ZA

Dear Mr. Legote

RE: CALL FOR COMMENT: REGULATIONS PRESCRIBING ELECTRONIC SERVICES FOR THE PURPOSE OF THE DEFINITION OF “ELECTRONIC SERVICES” IN THE VALUE-ADDED TAX ACT, 1991 (“VAT ACT”)

Thank you for the opportunity to provide comments on the Electronic Services Regulations.

Set out below, is the consolidated commentary on the Electronic Services Regulations that reflects the collective views of the Institute’s members, external stakeholders and industry role players consulted.

1 GENERAL MATTERS

1.1 Potential opportunities for abuse - Par 2(2)(b) of the Regulation

Problem statement

One of the proxies in paragraph 2(2)(b) is that any payment in respect of such electronic services must originate from a bank registered or authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990). Situations do, however, arise where payments are made, but not necessarily from a bank account – such as the use of ‘e-money’ or an ‘electronic purse’.

Paragraph 2(2)(b) also requires that the payment must be to that person (carrying on an enterprise in an export country) in respect of such electronic services. Payments made to a third party in this regard are not covered by this provision and would open it up for abuse.

Proposed solution/recommendation

The provisions of the Regulation should be expanded in order to include payments made utilising ‘e-money’ and an ‘electronic purse’. Clarity should also be provided as to whether these provisions will apply where the payment is made to a third party and if so, the section should specifically include instances where the payment is made to a third party.

1.2 Ambiguity as to whether supplies by means of telephone or satellite are included in supplies made by any ‘electronic agent, electronic communication or the Internet’ – Par 2(3) of the Regulation

Problem statement

It is not clear whether the supply by means of any ‘electronic agent, electronic communication or the Internet’ includes supplies by means of a telephone or satellite. It could mean that maintenance services via the Internet e.g. online support, will fall within the provisions of the Regulation, but should the same maintenance support be supplied via the telephone it will not (such as call centres).

Proposed solution/recommendation

It should be clarified if a supply by means of any ‘electronic agent, electronic communication or the Internet’ includes supplies by means of a telephone or satellite.

1.3 Differences between the value of electronic services vs. the recording of these services on CDs that are being imported

Problem statement

In situations where data such as software, games, music etc. are sent to the customer on a CD, the customs value will normally be the value of the disc (carrier medium). This will create a difference in tax revenue as the software etc. supplied electronically will be subject to value-added tax (“VAT”) at 14% on the full value whereas the software supplied via CD will only be subject to VAT on the minimal value of the CD.

Proposed solution/recommendation

Clarity should be provided as to how this difference in value will be managed by Treasury.

1.4 Registration of non-resident Holding companies with branches already registered for VAT in South Africa – Section 23(1A) of the VAT Act

Problem statement

The Regulation read with section 23(1A) of the VAT Act will compel all global Holding companies/ Head Offices to register for VAT in South Africa, where it recovers, for instance, a portion of a global software licence fee from its local subsidiary or branch. The concern is that the local branch might already be registered for VAT in South Africa. Obliging the foreign entity to register another “branch” for VAT would possibly result in a supply to itself not taking the branch/main business proviso into consideration. The treatment of situations where the amount recovered is netted off against the

supply of services to the main business i.e. no payment from SA bank account and value of service is reduced is also uncertain.

Should the foreign entity be allowed to use its local branch's VAT registration number, then potential differences could result when the income tax and turnover reconciliation is performed. The application of the general zero-rating of the supplies from the branch to the foreign entity is also uncertain.

Proposed solution/recommendation

Clarity should be provided on the above circumstances. Should the foreign entity be required to register another branch for VAT in order for it to account for the foreign supplies it makes, the administration burden behind this registration process should be minimised and it is suggested that these registrations should be centralised and dealt with at a Head Office level.

Please do not hesitate to contact us further should you require further clarity in this regard.

Yours sincerely,

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